

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Joint Application of SFPP, L.P. (PLC-9 Oil),  
CalNev Pipe Line, L.L.C., Kinder Morgan, Inc.,  
and Knight Holdco LLC, for Review and  
Approval under Public Utilities Code Section 854  
of the transfer of Control of SFPP, L.P., CalNev  
Pipe Line, L.L.C.

Application 06-09-016  
(Filed September 18, 2006)

And Relater Matter.

Application 06-09-021

**DECISION ON PETITION FOR MODIFICATION OF DECISION 07-05-061 TO  
ELIMINATE THE REQUIREMENT THAT SFPP MAINTAIN A LETTER  
OF CREDIT (LOC) IN THE AMOUNT OF \$100 MILLION****Summary**

We approve SFPP L.P.'s unopposed petition to eliminate the requirement that SFPP maintain a letter of credit (LOC) in the amount of \$100 million as required by Ordering Paragraph No.14 in Decision 07-05-061. Today's decision removes the requirement of the LOC and returns the original LOC to the issuing bank, JP Morgan Chase Bank, N.A.

## 1. Background and Procedural History

Decision (D.) 07-05-061 approved the transfer of indirect control and ownership over jurisdictional portions of two common carrier pipeline utilities, SFPP L.P. (SFPP) and its affiliate, Calnev Pipe Line, LLC (Calnev) to Kinder Morgan Incorporated (KMI). The approval was subject to several specified conditions. The Commission required SFPP, among other things, to provide a letter of credit (LOC) from a national bank in the amount of \$100 million to ensure payment of potential intrastate rate refunds. Ordering Paragraph No. 14 of D.07-05-061 requires the following:

Within 60 days of the effective date of today's decision, SFPP shall submit to the Director of the Commission's Energy Division and shall file as a "late-filed exhibit" in C.97-04-024 et al. a letter of credit from a national bank sufficient to pay potential California jurisdictional rate refunds of \$100 million. The letter of credit shall be designed, in form and in substance, to convey the direct obligation of the bank to any Shipper entitled to refunds, notwithstanding the insolvency or credit risk of the entity or entities legally responsible for repayment of the letter of credit. No costs associated with the letter of credit shall be recovered in future rates charged to pipeline customers.<sup>1</sup>

On December 18, 2014, the Commission issued D.14-12-057 approving an all-party settlement, which among other things, resolved SFPP's liability for rate refunds related to all previously pending SFPP rate proceedings and obligated

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<sup>1</sup> By letter to Sean Gallagher, Director of the Energy Division dated May 29, 2007, SFPP provided the letter of credit (TPTS-331946, dated May 25, 2007).

SFPP to make refund and settlement payments to its shippers in the amount of \$319 million.<sup>2</sup>

### **1.1. Nature of Relief Requested**

On December 24, 2014, SFPP filed the instant petition for modification (petition) to request that the Commission modify D.07-05-061 to eliminate the requirement that SFPP maintain a \$100 million LOC and to return the original LOC to the issuing bank.<sup>3</sup> SFPP also requests the Commission send an amendment letter signed by an authorized Commission representative cancelling the LOC. SFPP requests that the Commission take such actions as is practically feasible as SFPP continues to incur unrecoverable costs as a result of maintaining the LOC. No responses to the petition were filed.

#### **1.1.1. Requirements for Revising a Commission Decision**

Pub. Util. Code § 1708<sup>4</sup> provides that the Commission, after appropriate notice, may alter one of its prior decisions:

The commission may at any time, upon notice to the parties, and with opportunity to be heard as provided in the case of complaints, rescind, alter, or amend any order or decision made by it. Any order rescinding, altering, or

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<sup>2</sup> By letters to Edward F. Randolph, Director of the Energy Division dated December 29, 2014 and January 21, 2015, SFPP certified that all required refund and settlement payments have been made. (The letter is actually dated January 21, 2014, however, SFPP's attorney indicated in an email communication dated February 9, 2015, that the letter was dated January 21, 2015. Therefore, the date on the original letter was simply a typographically error.)

<sup>3</sup> SFPP requests the original LOC to be sent to JP Morgan Standby Letter of Credit, 131 South Dearborn, 5<sup>th</sup> Floor, Chicago, Illinois 60603.

<sup>4</sup> All subsequent references to statute mean the Public Utilities Code, unless otherwise specified.

amending a prior order or decision shall, when served upon the parties, have the same effect as an original order or decision.

A petition for modification is the procedural vehicle specifically designed to ask the Commission to revise a prior decision. Rule 16.4 of the Commission's Rules of Practice and Procedure governs such petitions.<sup>5</sup> SFPP's petition meets the requirements for a petition for modification set forth in Rule 16.4(b) and (c) because it clearly specifies the justification for the relief requested, clearly words the relief sought and has been filed and served on all parties to the proceeding.

The petition was filed more than one year after the Commission issued D.07-05-061<sup>6</sup>. However, the request is prompted by the issuance of D.14-12-057, approving the settlement of all pending SFPP rate matters.<sup>7</sup> SFPP was required by Ordering Paragraph No.14 to maintain the LOC until all potential intrastate rate refunds were made. Because rate refunds could not be made until the Commission approved the settlement, it was not possible for SFPP to file its petition to modify within one year. SFPP has justified its late filing of the petition to modify D.07-05-061.

## **2. Discussion**

SFPP's petition contends that there is no longer any valid reason to continue to require SFPP to maintain the \$100 million LOC to ensure payment of potential intrastate rate refunds as the Commission has approved the all-party settlement of all pending SFPP ratemaking proceedings pursuant to D.14-12-057.

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<sup>5</sup> All subsequent references to rules mean the Commission's Rules of Practice and Procedure, unless otherwise specified.

<sup>6</sup> D.07-05-061 was issued on May 24, 2007.

<sup>7</sup> These consolidated proceedings are referred to as C.97-04-025 et al.

SFPP's Certification of Ordered Refund and Settlement Payments dated January 21, 2015, indicates that all required settlement payments to the specified shippers have been completed. Specifically, SFPP maintains the following:

By correspondence dated December 29, 2014, SFPP certified to the Commission that it had made the required refund payment of \$54.2 million (as of December 23, 2014) and the first of two required settlement payments in the amount of \$263 million (as of December 26, 2014). The second and final settlement payment ordered by D.14-12-057 was due on or before January 20, 2015. By this correspondence, SFPP certifies to the Commission that it has made the required second settlement payment to specified shippers in the amount of \$1,773,063.

Finally, SFPP requests the petition be granted as quickly as possible. SFPP states that it continues to incur unrecoverable expenses of approximately \$100,000 per month in order to maintain the required LOC.

No public purpose is served by continuing the requirement that SFPP maintain the \$100 million LOC because SFPP has certified that all ordered refund and settlement payments as required by D.14-27-057 have been satisfied. Therefore, we remove the requirement that SFPP maintain a LOC in the amount of \$100 million.

### **3. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to § 311(g)(2) and Rule 14.6(c)(2), the otherwise applicable 30-day period for public review and comment is waived.

### **4. Assignment of Proceeding**

Michael Picker is the assigned Commissioner and Gerald F. Kelly is the assigned Administrative Law Judge in this proceeding.

**Findings of Fact**

1. SFPP's petition filed on December 24, 2014, is unopposed.
2. SFPP has established that the need for the \$100 million LOC as set forth in Ordering Paragraph No.14 of D.07-05-061 is no longer required as the all-party settlement has been approved by D.14-12-057.
3. SFPP has established that it made the required refunds and reparations as set forth in D.14-12-057.

**Conclusions of Law**

1. The unopposed petition for modification filed by SFPP should be granted.
2. The authority granted herein should be made effective today to ensure that costs associated with maintaining the LOC are minimized as the LOC is no-longer needed.

**O R D E R**

**IT IS ORDERED** that:

1. The unopposed petition for modification filed by SFPP L.P., on December 24, 2014, is granted.
2. Ordering Paragraph No. 14 of Decision 07-05-061 is deleted.
3. The original letter of credit (LC# TPTS-331946, issued on May 25, 2007, by JP Morgan Chase Bank, N.A.) shall be returned to the issuing bank.
4. The Commission's Fiscal Officer shall send to the issuing bank an amendment letter cancelling LC# TPTS-60369.

5. Application 06-09-016 and Application 06-09-021 are closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.